



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

CRS

Docket No: 6628-98

18 May 1999

[REDACTED]

Dear M. [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 5 May 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. The Board also considered an advisory opinion of 2 March 1999 from the Specialty Advisor for Psychiatry of the Bureau of Medicine and Surgery, a copy of which is enclosed.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 28 March 1968 at age 17. Your record reflects that you received three nonjudicial punishments. The offenses included an unauthorized absence of 12 days, sleeping on watch, possession of alcohol in your locker, and failure to obey a lawful order.

Your military record shows that on 10 November 1970 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for unauthorized absences totalling 61 days. Your record also shows that prior to submitting this request you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. The Board found that your request was granted and, as a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. You received an undesirable discharge

on 12 March 1971.

In your application, you request a change in the characterization of your discharge. You have submitted evidence from a doctor to the effect that you have post traumatic stress disorder (PTSD).

In the advisory opinion, two Navy psychiatrists concluded that there was no evidence to support a diagnosis of PTSD and there should be no change in the characterization of discharge.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your contention that PTSD caused your misconduct. However, the Board found these factors were not sufficient to warrant recharacterization of your discharge given your request for discharge to avoid trial for unauthorized absences totalling about two months, and your three earlier disciplinary actions. The Board believed that considerable clemency was extended to you when your request to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain when your request for discharge was granted and should not be permitted to change it now. Concerning the PTSD issue, the Board substantially concurred with the comments contained in the advisory opinion. Therefore, the Board concluded that your discharge was proper as issued and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure

**NATIONAL NAVAL MEDICAL CENTER
DEPARTMENT OF PSYCHIATRY
BEHAVIORAL HEALTHCARE CLINIC
BETHESDA, MARYLAND 20889-5600**

02 MARCH 1999

From: CPT Sharette K. Gray, MC, USA
To: CAPT W. S. Nash, MC, USN, Specialty Advisor to the Surgeon General for
Psychiatry, U.S. Naval Hospital, San Diego, CA 92134-5000

Via: Chairman, Department of Psychiatry, NNMC

Subj: APPLICATION FOR CORRECTION OF NAVAL RECORDS EX-PFC


Ref: (a) 10 U.S.C. 1171
(b) Board for Corrections of Naval Records Letter of 09 November 1998 to
Specialty Advisor for Psychiatry

Encl: (1) BCNR File
(2) Service record
(3) Service Medical Records

1. Per your request for review of the subject's petition for a correction of his USMC records and in response to reference (b), I have thoroughly reviewed enclosures (1) through (3).
2. Review of available service medical records revealed:
 - a) NAVMED 10, Sick Call Treatment Record, dated 12 June 1968 from the Camp Grieger Dispensary, Marine Corps Base Camp LeJeune, North Carolina documented a lifetime history of daytime enuresis, stress-induced. Based on this evaluation, the patient was referred to Neuropsychiatry for further evaluation and treatment recommendations.
 - b) SF513 Consultation sheet, dated 20 June 1968 from the Neuropsychiatry service confirmed the diagnosis of involuntary enuresis brought on by stress. The patient was treated with Librium 10mg p.o. TID to target anxiety. A follow-up note by Neuropsychiatry service dated 18 July 1968 indicated mild improvement of anxiety on Librium. Recommendations were made for continued use of Librium and no need for continued psychiatric follow-up.
 - c) NAVMED 10, Sick Call Treatment Records, dated 25 July 1968 from the Camp Grieger Dispensary, Marine Corps Base Camp LeJeune, North Carolina documented definite improvement in the service member's urinary incontinence

MAR 29 1999

on Librium. The service member was prescribed a refill of Librium 10mg PO TID, #21.

- d) Of note, there is no documentation in the service member's medical records of any psychiatric evaluation prior to discharge as, although this was recommended by the Staff Judge Advocate, as indicated in 3(i) below.

3. Review of the service record revealed:

- a) PFC Ackler entered active duty on 28 March 1968. He completed recruit training and weapons training. He reported for duty in Vietnam with Headquarters Company, 7th Marines, 1st Marine Division (Rein) on 31 March 1969. He participated in the following Operations in the Republic of South Vietnam:

Oklahoma Hills 31 March – 29 May 1969.

Pestone Canyon 26 May – 31 May 1969

Forsyth Grove 01 – 03 July 1969

- b) After completion of his tour in Vietnam PFC Ackler returned to Camp LeJeune, North Carolina. His performance evaluations prior to and during his tour in Vietnam ranged from 4.0 – 4.5. His performance evaluations after returning from Vietnam ranged from 1.0 – 4.2.

- c) [REDACTED] was awarded the National Defense Service Medal, Vietnam Service Medal, Combat Action Ribbon, Vietnam Campaign Medal, Vietnam Cross of Gallantry and a Letter of Appreciation.

- d) [REDACTED] committed multiple UCMJ offenses to include sleeping while on post as sentry in April 1969, disobeying a Marine Corps order in May 1970, failure to obey a lawful order in May 1970, and 12 incidents of unauthorized absences from November 1968 to January 1971 and was ultimately formally charged with four UCMJ violations of unauthorized absence for periods:

- 1) 07 July 1970 to 21 July 1970
- 2) 03 August 1970 to 10 August 1970
- 3) 11 August 1970 to 31 August 1970
- 4) 18 September 1970 to 15 October 1970

- e) Memorandum from [REDACTED] to Commanding General, 2d Marine Division, FMF, dated 10 November 1970 requesting a discharge for good of the service, with his charge sheet as an enclosure.
- f) Statement of [REDACTED] dated 10 November 1970, expressed his understanding of the type of discharge he was requesting (e.g. discharge for good of the service), the adverse nature of such a discharge and the possible

consequences thereof. As indicated in this statement, [REDACTED] also understood and waived his right to legal counsel.

- g) First endorsement from [REDACTED] to Commanding Officer, H & S Company, BLT 3/6, 2nd Marine Division, FMF, Subj: Rights of Respondent, dated 12 November 1970, documented [REDACTED]'s understanding of the repercussions of requesting a discharge for good of the service --eg. the waiving of all rights as a respondent, the possibility of a separation with a discharge under other than honorable conditions and the possible loss of benefits administered by the Veterans Administration and other federal agencies.
- h) First endorsement on [REDACTED] from Commanding Officer, Company H & S to Commanding General, 2nd Marine Division dated 01 December 1970 recommended approval of [REDACTED]'s request for separation based on [REDACTED]'s chronic offenses of UCMJ as well as his lack of regard for the rules and regulations of the Marines Corps. However, this document also expressed the opinion that [REDACTED] appeared "mentally incapable of accounting for his behavior."
- i) Memorandum of Review from Staff Judge Advocate to Commanding General, 2nd Marine Division dated 29 December 1970 recommended a psychiatric evaluation of the service member and disapproval of his request for discharge pending this evaluation based on the Company H&S Commanding Officer's statement (see 3(h) above) regarding [REDACTED]'s questionable ability to account for his behavior.
- j) [REDACTED] was discharged from the United States Marine Corps on 12 March 1971 with a discharge for the good of the service under conditions other than honorable.

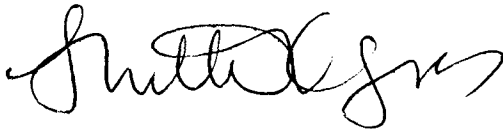
4. Discussion:

- a) [REDACTED] was formally evaluated by Neuropsychiatry Service on 20 June 1968 and diagnosed with involuntary enuresis secondary to stress. However, this condition preceded any incidents which the service member claims led to a diagnosis of Post Traumatic Stress Disorder.
- b) [REDACTED] committed multiple UCMJ violations and was charged with four specific unauthorized absence violations. He requested and ultimately received a discharge for the good of the service in lieu of court martial. He signed at least two statements (dated 10 & 12 November 1970) stating that he fully understood the implications and possible repercussions of this type of discharge.
- c) Staff Judge Advocate recommended disapproval of [REDACTED] request for discharge pending a psychiatric evaluation based on a statement by the service

member's Commander in the first endorsement that [REDACTED] appeared mentally incapable of accounting for his behavior".

- d) There is no documentation in the service member's medical record of any such psychiatric evaluation, nor any other documentation supporting an unfitting psychiatric condition, to include PTSD, prior to discharge. There is also no medical evaluation or mental health evaluation consistent with a diagnosis which would render the service member incapable of voluntarily signing the statement referenced in 4(b) above.

OPINION AND RECOMMENDATION: There is no evidence to support that [REDACTED] had any psychiatric diagnosis at the time of his service, including PTSD, which could account for the misconduct of record or preclude a discharge for the good of the service member under other than honorable conditions. There is no evidence to support a change in the type of discharge.



SHARETTE K. GRAY
CPT, MC, USA
Psychiatry Resident



THERESA A. BELL
LCDR, MC, USNR
Staff Psychiatrist